Date of decision : 16.11.1995

SPECIAL CIVIL APPLICATION NO 1279 OF 1995.

FOR APPROVAL AND SIGNATURE

THE HONOURABLE MR. JUSTICE B.C. PATEL

AND

THE HONOURABLE MS. JUSTICE R. M. DOSHIT

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the reporter or not?

3. Whether their Lordships wish to see the fair copy of judgment?

4. Whether this case involved a substantial q..

   interpretation of the Constitution of India, 1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Mr. N.R. Sahani, learned advocate for petitioner.
Mr. K.V. Gadhia, learned advocate for respondents.

CORAM: B.C. PATEL & R. M. DOSHIT, JJ.
DATE: 16TH NOVEMBER 1995

ORAL JUDGMENT: (PER B.C. PATEL, J.)

1. Rule. Mr. Gadhia, learned advocate for respondents waives service of rule. At the request of

learned advocates, the matter is finally heard and disposed of today.

2. This petition is filed by a Union, challenging the order passed by Industrial Court in References No. (IC) 137/91, 129/91 TO 136/91, 138/91 TO 143/91, whereby the References are allowed partly.

3. This petition being under Article 227 of the Constitution of India, we have to consider whether the Court below has disposed of the matter by following the procedure laid down under the law and by considering the evidence on record or not? In this matter, therefore, the question of re-appreciating the evidence led before the Industrial Court does not arise.

4. It is averred in the petition that in the respondent group of Companies (15 in number), underwears in the tradename "Nitex" are being manufactured. It is admitted by the Union that in comparison to the articles manufactured by the respondents, there are other Companies manufacturing similar articles such as "V.I.P.", "Menit", "Ranjit", "R.R.", and "Dora" etc. It is clear from the record that the respondent Companies and "Ranjit" are the two Companies situated in vicinity.

5. The Industrial Court has considered the evidence in detail. It is observed by the Industrial Court that Ranjit Hosiery is engaged in the manufacture of articles since last 25/30 years. Since about 6 to 7 years, articles manufactured in the southern part of the country, where cost of production is less, are sold in the State of Gujarat, as a result of which there is stiff competition in the State of Gujarat. Even there is difference in cost of production between the respondents and "Ranjit". It is pointed out that one workman engaged by the respondents operates only 4 machines while a workman engaged by Ranjit operates 6 machines. It is further pointed out that the respondents are partnership firms and documents indicate that the respondent Companies has earned profit in 1991; However, the partners who have invested amount, are neither taking salary nor interest, and considering these into account, the profit is very nominal. The Court has also considered the fact that inspite of the respondents employing more number of workmen compared to "Ranjit", the production is less and the quality of the product is also not equivalent, and infact less. On account of reduction in sale and profit at very low ratio, it is not possible to satisfy the demand of the workman. In paragraph 36 of the judgment, the Court has also considered a decision rendered by the apex Court. The

Court has further considered that the rise given to the workman of Ranjit is also given to the workmen of respondent inspite of the fact that a workman employed by the respondents is operating only four machines while a workman employed by Ranjit is operating six machines. Considering the evidence led before the Court on oath, the Court has directed to give the benefit as stipulated in its order.

6. The Tribunal has committed an error in granting benefit from 1.1.1992. Ordinarily, benefit should have been given from the date of Reference. In the instant case, Mr. Gadhia fairly stated that the benefit may be given from 1.4.1991 eventhough the date of demand is 15.4.1991. In view of this, the benefit will have to be given from 1.4.1991 and not 1.1.1992. Under the circumstances, clause (1) of paragraph 41 of the judgment of the Industrial Court stands modified to the effect that the workmen are required to be given benefit from 1.4.1991 instead of 1.1.1992.

7. Mr. Sahani, learned advocate submitted that the Industrial Court has committed an error in comparing the case of the respondents with Ranjit. Mr. Sahani submitted that a manufacturing unit manufacturing similar articles can be compared. However, Mr. Sahani is unable to point out that there are other units in the vicinity or in the State of Gujarat other than Ranjit, that can be compared with the respondents.

8. The Industrial Court has considered the case on the basis of industry-cum-region, relying on the apex Court's judgment. We find no error committed by the Tribunal in coming to the conclusion on this ground.

9. The Industrial Court has given much emphasis that in the respondent Companies, one workman operates four machines while in Ranjit, one workman operates six machines. Therefore, in Ranjit, for 12 machines, only two workmen are required while in the respondent Companies, for 12 machines three workmen are required. Thus, it is clear that in the respondent Companies, for every 12 machines, three workmen are surplus for carrying out the same work. That also is a relevant consideration, as observed in paragraph 37 of the order, and we are in agreement with this finding of the Industrial Court.

10. Mr. Sahani, learned advocate further submitted that though there was a demand for Dearness Allowance, the same is rejected. We pointed out to the learned

advocate that what materials were placed before the Industrial Court in this behalf, to which learned advocate stated that it is for the Court to grant the demand fully or partly even without the petitioner Union placing any material on record in this behalf, but the claim ought not to have been rejected in toto. Learned advocate could not point out any material placed before the Industrial Court in this behalf. On behalf of the Union, it was submitted that the workmen engaged in textile industry are getting D.A. He further submitted that the same DA should have been extended by the workman engaged by the respondents. It was submitted before the Industrial Court that if that is accepted, then they are willing to forgo their further demands. This was a submission made by the learned advocate. However, on behalf of the Union, in evidence, this aspect is not suggested. Not only that, but as observed by the Tribunal, though a witness on behalf of the Union was examined on oath, has not pointed out any justification for claiming the same benefit. Infact, the witness has not uttered a word about it. It thus appears that no material whatsoever has been placed before the Tribunal in this behalf. If before the Tribunal the material was placed and inspite of it the same was not considered, then it would have been a different matter. But, in the absence of other materials, there is no justification in making any grievance that the Industrial Court has erred in rejecting the demand of Dearness Allowance.

11. Mr. Sahani, learned advocate lastly submitted that, vide clause 7 of the order, the Tribunal has directed that if work is not available to be offered to a workman in which he is regularly engaged, then he can be given other type of work and the workman has to do the other work offered to him without any reduction of pay. It is further observed that the workman will have to carry out the work for which directions are given. It goes without saying that if a workman is asked to do a work with which he is not conversant, he may not be able to do that work. However, learned advocate Mr. Gadhiya submitted that unskilled workers are not given the work of operating machines but on some occasions, due to some circumstances such as failure of electricity or defect in the machines, if such worker is asked to do some other work such as in the packing department etc., they have to work. There is no reason to pass any order that in such cases, the workmen should not be given such work. He fairly stated that they will not be given work which is not familiar to them.

12. In the light of the aforesaid, we allow this

petition partly by modifying clause (1) of paragraph 41 of the judgment of the Industrial Court, as aforesaid. The difference on account of this shall be paid by the respondents within a period of two months from today.

The petition stands partly allowed accordingly. Rule made partly absolute with no order as to costs.

csm./